

Remarks

Support for the amendment to claim 1, 12, and 20 is on page 5, lines 11-13. No new matter has been added to the application by the amendments.

Attached hereto is a marked up version of the changes made to the claims by the current Amendment. The attached sheet is captioned "Version with Markings to Show Changes Made".

Claims 1-4, 7-14, and 16-27 are pending.

Rejections based on 35 U.S.C. § 103(a)

The Examiner rejected all pending claims as obvious over U.S. Patent No. 4,812,323 issued to Savage (hereinafter "Savage"). Applicants respectfully submit that the pending claims are not obvious over Savage.

Savage does not teach all the elements of independent claims 1, 12, and 20. Savage does not teach or suggest that the sweetener includes at least one high molecular weight starch hydrolysate having a DE of 1 to 20 or crystalline hydrate former. Rather, Savage teaches a corn syrup solids as typically used in baked goods. As noted in the concurrently filed Declaration by Fern Panda, if the DE value of the corn syrup solids is not specified, one of skill in the baking art concludes that the corn syrup solids are the typical corn syrup solids used for baking and that the corn syrup solids have a DE value of about 36 to about 43. See Lorenz, Klaus J., "Carbohydrates in Cookies," in Cookie Chemistry and Technology, ed. Karel Kulp, American Institute of Baking, Manhattan, Kansas (1994); and Schanot, M. A., "Sweeteners: Functionality in Cookies and Crackers," Tech. Bull. Am. Inst. Baking 3(4): pp. 1-4 (1981).

Savage provides no teaching or suggestion that a baked good having a thickness of about 2.2 mm has a modulus of at least 200 g/mm² when the moisture content is 10 wt.%. The data included in the Declaration by Fern Panda indicates that formulation B containing corn syrup solids in the range of 36 to 43 DE does not have a modulus of at least 200 g/mm² when the moisture content is 10 wt.%.

As stated in the Declaration, Savage does not teach the addition of water to a dough or batter composition. The only moisture provided in the Savage formulation is from the eggs. Thus, the sucrose and corn syrup solids in the Savage formulation are not completely dissolved. In contrast, Examples 1 to 7 of the present invention contain 41 weight percent water in the batter. This amount of water is enough to dissolve or hydrate the sweetener.

As stated by Fern Panda in the accompanying Declaration, the structure of a baked good formed in the present invention is different than that taught by Savage. Because of the low moisture content, the starch in the flour is unlikely to gelatinize in the Savage formulation when a baked good is produced. In contrast, the high moisture content in the dough or batter composition of the present invention favors gelatinization of the starch in the flour. See Kulp et al., "Starch functionality in cookie systems," Starch, 43(2), pp. 53-57 (1991); and Livings et al., "Ageing in confectionary wafers," in The Glassy State of Foods, ed. J. Blanshard and P. Lillford, Nottingham University Press, Loughborough, Leicestershire (1993).

Further, the data included in the Declaration indicates that formulation B containing corn syrup solids in the range of 36 to 43 would tend to pick up more moisture over time than a formulation containing a starch hydrolysate with a DE value of 1 to 20. That is, a product made according to the formulation disclosed by Savage is more likely to become soggy over time compared to a product prepared according to the claims of the present application.

Modulus correlates with crispiness. Savage provides no teaching for obtaining a crispy baked good or for retaining the crispy characteristic under storage conditions in which the product is exposed to moisture. As such, Savage provides no motivation for replacing the corn syrup solids with another that has a significantly higher molecular weight or with a crystalline hydrate former.

Savage does not teach or suggest all the claim limitation of independent claims 1, 12, and 20. Therefore, the claimed invention is not obvious in view of Savage. Applicants respectfully request withdrawal of the obviousness rejection based on Savage.

Applicants believe that claims 1-4, 7-14, and 16-27 are now in condition for allowance and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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Version with Markings to Show Changes Made

In the claims:

1. (Twice amended) A dough or batter composition comprising flour, water and a sweetener, the sweetener comprising at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 [and] or a crystalline hydrate former, the dough composition, when baked to a thickness of about 2.2 mm, having a modulus of at least 200 g/mm² at a moisture content of 10%.

12. (Twice amended) A baked good made from a dough or batter composition comprising flour, water and a sweetener, the sweetener comprising at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 [and] or a crystalline hydrate former, the baked good, when having a thickness of about 2.2 mm, having a modulus of at least 200 g/mm² at a moisture content of 10%.

20. (Twice amended) A filled food product comprising:
a baked good composition comprising flour, water and a sweetener, the sweetener comprising at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 [and] or a crystalline hydrate former; and
a filling in contact with the baked good.

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